

Notice of Allowability

Application No.

09/405,299

Applicant(s)

ALBERTE ET AL.

Examiner

Marie R. Yamnitzky

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE, Amendment, IDS and Terminal Disclaimer received February 13, 2006.
2. ☒ The allowed claim(s) is/are 71-73 and 104-106 (renumbered as 1-6, respectively).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 9.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date rec'd 02/13/2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 04262006.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on February 13, 2006 have been entered.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for the examiner's amendment to the claims was given in a telephone interview with Michael DiVerdi and Beth Arnold on April 21, 2006. (The changes to the specification, which update the status of the parent application or correct errors of a spelling and/or grammatical and/or typographical nature, were not specifically discussed with applicant's representative.)

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The application has been amended as follows:

In the specification:

Page 1, the Related Application section added by amendment received June 11, 2003, has been amended to read as follows:

Related Applications

This application is a continuation-in-part of United States Patent Application serial number 09/159,814, filed September 23, 1998, now abandoned.

Page 1, line 11: "benzimoidazoles" has been changed to --benzimidazoles--.

Page 1, line 16: "because" has been deleted.

Page 3, line 17: "isolate isolate" has been changed to --isolates--.

Page 3, line 19: "indication" has been changed to --indicate--.

Page 3, line 20: "it" has been changed to --its--.

Page 11, line 6: "represented" has been changed to --represents--.

Page 11, line 10: "represented" has been changed to --represents--.

Page 11, line 19: "cherrries" has been changed to --cherries--.

Page 11, line 22: "of" has been changed to --or--, and "typical" has been changed to --typically--.

Page 13, line 8: "are" has been deleted, and "is" has been changed to --are--.

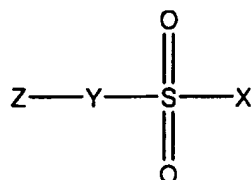
Page 13, line 9: "of" has been changed to --or--.

Page 14, line 24: "release" has been changed to --release"--.

In the claims:

1-70. (Canceled)

71. (Currently Amended) A coating for contacting a plant surface comprising an effective amount of a compound represented by general structure 2:



2

wherein

X represents -OH, F, Cl, or Br;

Y represents O;

Z represents optionally substituted alkylphenyl, or $-(\text{CH}_2)_m\text{-R}_{80}$, wherein when Z is substituted, a substituent is selected independently for each occurrence from the group consisting of alkyl and aralkyl;

R_{80} represents independently for each occurrence aryl; and

m is an integer in the range of 0 to 8 inclusive;

wherein the coating releases the compound or a biologically active fragment thereof, and

wherein ~~the coating is aqueous or the compound is microencapsulated in a liquid or a solid~~ with

a microcapsule coating material comprising an organic polymer, hydrocolloids, lipid, fat, carbohydrate, wax, inorganic oxide, or silicone polymer.

72. (Previously Presented) The coating of claim 71, wherein Z represents optionally substituted alkylphenyl or aralkylphenyl.

73. (Previously Presented) The coating of claim 71, wherein Z represents 4-(2-methylpropyl)phenyl, 4-(1,1-dimethylethyl)phenyl, 4-(1,1-dimethylpropyl)phenyl, 4-pentylphenyl, 4-(1-methyl-1-phenylethyl)phenyl, or 4-(1-methylheptyl)phenyl.

74-103. (Canceled)

104. (Currently Amended) The coating of claim 71, wherein the coating ~~is aqueous~~ comprises water.

105. (Previously Presented) The coating of claim 71, wherein the coating comprises an inorganic oxide.

106. (Previously Presented) The coating of claim 71, wherein the coating comprises a silicone polymer.

Regarding the deletion of “aqueous” from claim 71, the examiner notes that this deletion does not exclude water from the claimed coating since the claim language is open, but excludes aqueous coatings wherein the compound of general structure 2 is not microencapsulated with a microcapsule coating material as recited in the last three lines of the claim.

The language regarding the microcapsule coating material is supported by the original specification (e.g. see the paragraph bridging pages 14 and 15). The term “hydrocolloids” is inserted at the request of applicant’s representative and finds support, e.g., at page 15, line 11.

The terminal disclaimer filed on February 13, 2006, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application No. 09/406,184, has been reviewed and is accepted. The terminal disclaimer has been recorded.

The prior art made of record and not relied upon is considered pertinent to applicant’s disclosure.

2,190,733 (Richmond): In particular, see lines 23-38 of the first column on page 2.

3,133,949 (Rutkowski et al.): For example, see column 1, lines 23-31, c. 5, l. 30-52 and c. 7, l. 8-10.

4,243,549 (Messenger et al.): For example, see column 5, line 43.

5,057,533 (Tanaka et al.): For example, see Example 1.

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The patent numbers of the four patents listed on the preceding page were provided to applicant's representative during the telephone interview on April 21, 2006.

The following is an examiner's statement of reasons for allowance:

The prior art does not disclose or suggest a coating comprising a compound of general structure 2 as defined in present claim 71 wherein the compound is microencapsulated with a microcapsule coating material as recited in claim 71 wherein the coating is capable of releasing the compound or a biologically active fragment thereof.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication should be directed to Marie R. Yamnitzky at telephone number (571) 272-1531. The examiner works a flexible schedule but can generally be reached at this number from 6:30 a.m. to 4:00 p.m. Monday, Tuesday, Thursday and Friday, and every other Wednesday from 6:30 a.m. to 3:00 p.m.

The current fax number for all official faxes is (571) 273-8300. (Unofficial faxes to be sent directly to examiner Yamnitzky can be sent to (571) 273-1531.)

MRY
April 26, 2006



MARIE YAMNITZKY
PRIMARY EXAMINER

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